

**BEFORE THE  
UNITED STATES TRADE REPRESENTATIVE**

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**IN THE MATTER OF:**

Certain Steel

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Investigation No. TA-201-73

**WRITTEN COMMENTS OF**

**TUBAC S.A.**

**REGARDING**

**WELDED NON-OCTG AND EXCLUSION UNDER CBERA**

**POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH  
REGARD TO IMPORTS OF CERTAIN STEEL**

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**TUBAC S.A.: USTR REMEDY BRIEF**

**I. INTRODUCTION**

Tubac S.A. (“Tubac”) respectfully submits the following brief with respect to the Presidential phase of the Steel Section 201 action. Tubac’s arguments pertain to welded non-OCTG, which was investigated by the U.S. International Trade Commission (“Commission”) and for which the Commission made injury findings and issued remedy recommendations.

Tubac respectfully submits that the President should exclude Guatemalan imports of welded non-OCTG because Guatemala is a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), which entitles it to preferential consideration by the President. Thus, in accordance with the statutory intent of the CBERA and based on the established practice with respect to the CBERA, the President should exclude imports from CBERA beneficiary countries because these imports are not substantial.

**II. THE PRESIDENT SHOULD EXCLUDE GUATEMALAN IMPORTS OF WELDED NON-OCTG BECAUSE IT IS A BENEFICIARY COUNTRY OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA)**

**A. The Statute Supports The Exclusion Of Guatemalan Imports Of Welded Non-OCTG**

Congress enacted the Caribbean Basin Economic Recovery Act (CBERA) in 1983 and it took effect August 5, 1983.<sup>1</sup> The CBERA eliminates, or in some cases reduces, tariffs on eligible

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<sup>1</sup> Public Law 98-67, Title II, §§ 211-216, 97 Stat. 384 (19 U.S.C. §§ 2701-2706).

products of designated Caribbean, Central American, and South American countries and territories. The CBERA was intended to address “both emergency problems and long-range economic development.”<sup>2</sup> The “centerpiece” of CBERA was “the offer of one-way free trade under Title I of the legislation, providing the most favorable and secure long-term access possible to the U.S. market.”<sup>3</sup> The Commission describes the “primary goal” of CBERA as “to promote export-oriented growth in the Caribbean Basin countries and to diversify their economies away from traditional agricultural products and raw materials.”<sup>4</sup>

The CBERA provides that:

In any report by the International Trade Commission to the President under [19 U.S.C. § 2252(f)] regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this chapter, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.<sup>5</sup>

In commenting on this and other provisions of 19 U.S.C. 2703(e), the House Ways and Means Committee stated in its report on the legislation that the standard import relief measures under section 201 would be available with respect to CBERA imports, with certain modifications specified under section [19 U.S.C. § 2703(e)].<sup>6</sup> The Committee continued:

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<sup>2</sup> H. R. Rep. No. 98-120 (1983), 3, 1983 U.S.C.C.A.N. 643, 644.

<sup>3</sup> *See id.*

<sup>4</sup> *Caribbean Basic Economic Recovery Act, Andean Trade Preference Act: Impact on the United States*, USITC Publication 3132, September 1998, xiii.

<sup>5</sup> 19 U.S.C. § 2703(e)(2). Note that 19 U.S.C. 2252(f) applies to the report by the Commission to the President on the investigation.

<sup>6</sup> H. R. Rep. No. 98-120 (1983), 18, 1983 U.S.C.C.A.N. 643, 659, emphasis added.

Section 103(e) [19 U.S.C. § 2703(e)] is designed to provide domestic industry and labor the standard avenues for obtaining safeguard measures against injurious imports while providing more secure preferential duty-free access to the U.S. market for imports from CBI beneficiary countries than exists under present law.<sup>7</sup>

The legislative history makes it clear that although Congress provided the standard avenues for section 201 actions, CBERA countries were to be “more secure” from section 201 measures than they were under “present law” (*i.e.*, the law in effect prior to enactment of the CBERA). Thus, the intent of Congress as demonstrated by the statutory language and the legislative history supports exclusion of imports from CBERA beneficiary countries.

**B. The Commission Has Recommended That The President Exclude CBERA Countries From The Remedy**

The Commission has followed the intent of Congress with regard to CBERA and has recommended to the President that he exclude from any remedy the imports of CBERA beneficiary countries. The Commission majority stated:

The Commission further recommends that none of the additional tariffs or tariff-rate quotas apply to imports from Israel, or to any imports entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.<sup>8</sup>

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<sup>7</sup> See *id.*, (emphasis added).

<sup>8</sup> Determination and Views of the Commission, *Steel*, Inv. No. TA-201-73, USITC Pub. No 3479 (December 2001) at 8 (“Commission Opinion”).

The Commission majority based its recommendation not to include the CBERA countries in any remedy action for flat-rolled products on the fact that “[t]he only imports of certain carbon flat-rolled steel during the period of investigation from these countries were small and sporadic.”<sup>9</sup>

Additionally, two of the three Commissioners that did not join the majority remedy recommendations also recommended that the President exclude CBERA countries from any remedy on welded non-OCTG. Thus, five of the six Commissioners in this investigation recommended that the President not include CBERA beneficiary countries in any remedy on welded non-OCTG steel. Accordingly, the President should adopt this recommendation and exclude CBERA beneficiary countries from his remedy.

**C. Imports From CBERA Beneficiary Countries Should Be Excluded From The President’s Remedy Because They Are Not Substantial**

**1. The President Has An Established Practice Of Excluding Imports From CBERA Countries When They Are Not Substantial**

The President has an established practice in section 201 investigations of excluding CBERA countries when imports from those countries are not substantial. Only in the *Broom Corn Brooms* and the *Certain Steel Wire Rod* cases did the President choose not to exclude imports from CBERA beneficiary countries. In these two cases imports from CBERA beneficiary countries were a substantial share of imports of total imports. In *Broom Corn Brooms*, CBERA beneficiary countries (Panama and Honduras) accounted for between 20% and 43% of all U.S.

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<sup>9</sup> Commission Opinion at 382 (citing C.R. and P.R. at Tables E-1, E-2, and E-3) (emphasis added).

imports during each year of the period of investigation.<sup>10</sup> In *Certain Steel Wire Rod*, a CBERA country (Trinidad and Tobago) accounted for between 10% and 13% of all U.S. imports during each year of the period of investigation and was the second largest country exporter over the entire period of investigation.<sup>11</sup> In all other section 201 investigations resulting in an affirmative decision since 1990, the President has excluded CBERA beneficiary countries from the import relief action on the basis that imports from such countries were not substantial.<sup>12</sup>

**2. In This Case, Imports From CBERA Beneficiary Countries Are Not Substantial**

As the Commission stated in its opinion, imports of steel from CBERA beneficiary countries during the POI were “small and sporadic.” Imports of welded tubular products from CBERA beneficiary countries did not exceed 0.35% in any of the years between 1996 and 2000.<sup>13</sup> Imports of all tubular products on which the Commission made an affirmative injury determination or was evenly divided from CBERA beneficiary countries did not exceed 0.03% in

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<sup>10</sup> *Broom Corn Brooms*, Investigations Nos. TA-201-65 and NAFTA 302-1, USITC Publication 2984, August 1996, II-17.

<sup>11</sup> *Certain Steel Wire Rod*, Investigation No. TA-201-69, USITC Publication 3207, July 1999, II-14, II-15.

<sup>12</sup> See *Report to the President on Investigation No. TA-201-63; Extruded Rubber Thread*, 58 Fed. Reg. 4717 (Jan. 15, 1993); *Wheat Gluten*, Investigation No. TA-201-67, USITC Publication 3088, March 1998, I-3, I-29; *Lamb Meat*, Investigation No. TA-201-68, USITC Publication 3176, April 1999, C-6; *Circular Welded Carbon Quality Line Pipe*, Investigation No. TA-201-70, USITC Publication 3261, December 1999, I-4, I-83.

<sup>13</sup> Commission Report (public) at Table E-2, Import data from ITC DATAWEB.

any of the years between 1996 and 2000.<sup>14</sup> In fact, imports from CBERA beneficiary countries of virtually all of the products on which the Commission made an affirmative injury determination or was evenly divided are well below 0.5% and most are less than 0.1%.<sup>15</sup>

Clearly, when imports from CBERA beneficiary countries are so insignificant, the interest Congress specified in “providing more secure preferential duty-free access to the U.S. markets for imports from CBI beneficiary countries”<sup>16</sup> outweighs any slight protection against CBERA imports that including CBERA countries in the remedy could possibly give. Thus, the President should exclude imports from CBERA countries because they are not substantial.

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<sup>14</sup> *See id.*

<sup>15</sup> *See id.* The exceptions are Rebar in interim 2001, in which the percentage of U.S. imports from CBERA beneficiary countries was 1.20%, and stainless bar in 1997 in which the percentage of U.S. imports from CBERA beneficiary countries was 1.45%

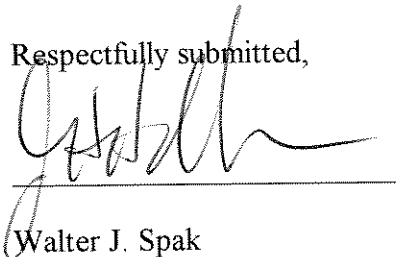
<sup>16</sup> H.R. Rep. No. 98-120 (1983), 18, 1983 U.S.C.C.A.N. 643, 659.



### **III. CONCLUSION**

Based on the foregoing, Tubac respectfully submits that the President should exclude Guatemalan imports of welded non-OCTG from any remedy because Guatemala is a beneficiary country under the Caribbean Basin Economic Recovery Act (CBERA), which entitles it to preferential consideration by the President. In accordance with the statutory language and the legislative history and based on established practice, the President should exclude CBERA imports because these imports are not substantial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Spak', is written over a horizontal line.

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